

**United States Department of Labor
Employees' Compensation Appeals Board**

M.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Pauls, NC, Employer**

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**Docket No. 17-1225
Issued: September 18, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 15, 2017 appellant filed a timely appeal from a March 29, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish left lower back and hip conditions causally related to the accepted February 8, 2016 employment incident.

FACTUAL HISTORY

On February 8, 2016 appellant, then a 55-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on the same date she was bending to pick up circulars from the

¹ 5 U.S.C. § 8101 *et seq.*

floor and experienced left lower back and hip pain radiating down the groin and left leg. She stopped work on February 9, 2016.

Appellant was treated by Dr. Jonathan E. Nance, a chiropractor, on February 9 and 16, 2016, for radiating hip pain. She reported that on February 8, 2016 she was bending down to pick up papers which had fallen on the floor and felt sharp left hip pain with radiation into the front and back of the leg. Appellant presented with complaints of acute constant dull pain in the left buttock, and acute pain in the front of the left leg, at the back of the left leg and left thigh. Examination findings included muscle guarding at L5-S1, intact reflexes, and decreased lumbar flexion with acute pain. Dr. Nance noted objective findings of subluxation at L5-S1 with acute joint restriction, and acute muscle spasm on palpation of the left piriformis, left gluteus medius, and left thigh. He diagnosed sprain of the sacroiliac joint, as well as a strain of the muscle, fascia, and tendon of the pelvis. Dr. Nance treated appellant with manipulation to L5-S1. In February 10 to 15, 2016 reports, he noted objective findings of subluxation at L5-S1 with an acute degree of aberrant motion and acute muscle spasm in the left gluteus medius, left piriformis, and left thigh. In a February 17, 2016 duty status report (Form CA-17), Dr. Nance noted clinical findings of severe left hip pain radiating into the back left thigh. He noted that appellant could not return to work at that time.

By letter dated March 4, 2016, OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors. It noted that medical evidence must be submitted by a qualified physician and that a chiropractor was not considered a physician under FECA unless there was a diagnosis of spinal subluxation as demonstrated by x-ray.

Appellant submitted duty status reports from Dr. Nance dated February 23 and 25 and March 1, 2016, who noted clinical findings of left hip pain radiating into the front and back of the left thigh. He again diagnosed sprain of the sacroiliac and a strain of the muscle, fascia, and tendon of pelvis. Dr. Nance noted that appellant could not resume work. Duty status reports dated March 3 and 8, 2016 noted clinical findings of left hip pain radiating into the front and back of the left thigh. Dr. Nance noted that appellant could return to work regular duty on March 9, 2016.

In an April 11, 2016 decision, OWCP denied the claim finding that appellant had not submitted medical evidence to establish a medical condition causally related to the accepted work incident. Thus, appellant failed to establish fact of injury.

On April 23, 2016 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review which was held on January 12, 2017.

In a decision dated March 29, 2017, an OWCP hearing representative affirmed the decision dated April 11, 2016. She found that Dr. Nance was not considered a physician as he had not diagnosed the existence of a spinal subluxation based on x-rays.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.³

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

ANALYSIS

It is undisputed that on February 8, 2016, while working as a rural carrier, appellant was bending to pick up circulars from the floor. However, the Board finds that she failed to submit sufficient medical evidence to establish that this work incident caused or aggravated her diagnosed conditions of sprain of the sacroiliac joint, and strain of the muscle, fascia, and tendon of the pelvis. In a letter dated March 4, 2016, OWCP had requested that appellant submit a comprehensive medical report from her treating physician which included a reasoned explanation as to how the accepted work incident had caused her claimed injury.

Appellant submitted reports from Dr. Nance, a chiropractor, dated February 9 and 16, 2016, who noted that appellant reported that on February 8, 2016 she was bending down to pick up papers that had fallen on the floor and felt sharp left hip pain with radiation into the front and back of the leg. Dr. Nance's findings included subluxation of L5-S1. In reports dated February 10 to 15, 2016, he also noted objective findings of subluxation at L5-S1. In duty status reports dated February 17 to March 8, 2016, Dr. Nance noted appellant's current status. Section 8101(2) of FECA provides that chiropractors are considered physicians "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the

² Gary J. Watling, 52 ECAB 357 (2001).

³ T.H., 59 ECAB 388 (2008).

⁴ I.J., 59 ECAB 408 (2008); Victor J. Woodhams, 41 ECAB 345 (1989).

spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.”⁵ Thus, where x-rays do not demonstrate a spinal subluxation, a chiropractor is not considered a “physician,” and his or her reports cannot be considered as competent medical evidence under FECA.⁶ Dr. Nance noted findings of subluxation at L5-S1. However, he did not indicate or explain that his diagnosis was based on x-rays. As the evidence does not establish that he diagnosed a spinal subluxation by x-ray, Dr. Nance’s opinion is not considered competent medical evidence under FECA.⁷

Consequently, the Board finds that appellant has failed to submit sufficient medical evidence to establish that her accepted work incident on February 8, 2016 resulted in an injury.

On appeal appellant indicated that she was treated by a chiropractor for her injury. She noted that her supervisor was present when the accident occurred and she sought medical attention in the appropriate time frame and completed the necessary forms. As found above, however, the medical evidence fails to establish a diagnosed medical condition causally related to her accepted work incident. While appellant submitted reports from her chiropractor, Dr. Nance, he is not considered a physician under FECA as he did not base his diagnosis of spinal subluxation on a review of x-rays.⁸ She has not otherwise submitted a physician’s report which describes how the accepted incident on February 8, 2016 caused or aggravated a sprain of the sacroiliac joint, or a strain of the muscle, fascia and tendon of the pelvis.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish left lower back and hip conditions causally related to the accepted February 8, 2016 employment incident.

⁵ 5 U.S.C. § 8101(2); *see also* section 10.311 of the implementing federal regulations provides: “(c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. OWCP will not necessarily require submittal of the x-ray, or a report of the x-ray, but the report must be available for submittal on request.”

⁶ *See Susan M. Herman*, 35 ECAB 669 (1984).

⁷ *See C.J.*, Docket No. 16-0055 (issued April 5, 2016) (chiropractor’s report did not constitute competent medical evidence where the chiropractor diagnosed a lumbar subluxation but did not indicate that he obtained or reviewed x-rays in rendering his diagnosis of subluxation).

⁸ *See supra* notes 5 through 7.

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board